

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD THOMPSON,	§	
	§	No. 551, 2005
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. I.D. No. 0502002001
Plaintiff Below,	§	
Appellee.	§	

Submitted: May 17, 2006

Decided: July 17, 2006

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 17<sup>th</sup> day of July, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) Donald Thompson appeals the Superior Court's sentencing decision. Thompson pled guilty to attempted terroristic threatening, and the trial court sentenced him to one year at Level V. Thompson complains that the sentence was not the product of a logical and deductive process because it exceeded the SENTAC guidelines and there were no compelling reasons to justify the exceptional sentence. We find no merit to this appeal, and affirm.

2) In January 2005, Thompson was serving an 11 year sentence for robbery and several weapons offenses. He was working on his appeal, and felt that he had inadequate access to the prison law library. Thompson decided that he would have better access to a law library in a federal prison, so he attempted to commit a federal crime. Thompson placed some powdered coffee creamer in an envelope, along with a piece of paper that said “Anthrax.” He addressed the envelope to a federal court in Philadelphia, and included his return address. Prison authorities intercepted the envelope before it left the prison, and Thompson confessed as soon as he was confronted.

3) On the day of trial, Thompson pled guilty to attempted terroristic threatening. The State recommended immediate sentencing, and asked that Thompson be sentenced to three months at Level V suspended immediately for 30 days solitary confinement. The State also asked that the new sentence interrupt the 11 year sentence Thompson then was serving. The court did not sentence Thompson immediately because the State was unable to corroborate Thompson’s assertion that he had already served 30 days in solitary confinement.

4) Three weeks later, after the State confirmed that Thompson had served the time in solitary confinement, the trial court sentenced him to one year at Level V. The court explained its sentence by saying, “I can’t let the act go unpunished.” Because

the State had recommended only 30 days of solitary confinement, and the SENTAC guidelines recommend 12 months at Level II, Thompson filed a motion for reconsideration of sentence. The trial court denied the motion, and explained that the aggravating factor that supported the sentence was “undue depreciation of the offense.”

5) Thompson argues that the trial court’s sentence was not the “logical and deliberative product of an open minded jurist.”<sup>1</sup> When Thompson entered his guilty plea, and the State recommended 30 days of solitary confinement, the trial court described solitary confinement as a “rather drastic kind of thing.” The trial court postponed sentencing in order to determine whether Thompson had, in fact, served the solitary confinement. But, a few weeks later, when that fact was confirmed, the trial court apparently treated Thompson’s term of solitary confinement as no punishment at all, since it stated that Thompson’s act could not be allowed to “go unpunished.”

6) It is settled law that “appellate review of criminal sentences [generally] is limited in Delaware to a determination that the sentence is within the statutory limits.”<sup>2</sup> Thompson’s sentence was within the statutory limit for a class F felony –

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<sup>1</sup>*Siple v. State*, 701 A.2d 79, 86 (Del. 1997).

<sup>2</sup>*Siple v. State*, 701 A.2d at 83.

three years in prison. Moreover, “there is no constitutional or statutory right in Delaware to appeal a criminal punishment on the sole basis that it deviates from the SENTAC sentencing guidelines.”<sup>3</sup> Even in cases where the trial court failed to explain the reasons for its departure from the sentencing guidelines, we have not found reversible error.<sup>4</sup> Here, where the trial court did explain its reasons for the sentence, we conclude that the sentencing decision must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Mayes v. State*, 604 A.2d 839, 846 (Del. 1992).